IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 666 OF 2006

SOU. SHALANBAI SUDAM TAKALE & ANR. PETITIONERS

Versus

VIMALKUMAR KESARIMAL JAIN & ORS. RESPONDENTS

Mr. Dilip Bodake for petitioners

CORAM:-SMT. RANJANA DESAI, J.

DATED:- 31/3/2006

P.C.

. Special Civil Suit No. 201 of 1993 was disposed of by a compromise decree. Special Darkhast No. 222 of 1993 was filed by defendants 1 to 5 for execution of the decree. The petitioners are original judgment debtors 17 & 18 respectively. They have challenged in this writ petition orders dated 9/7/04, 22/7/05 and 30/8/05, passed in Special Darkhast No. 222 of 1993.

2. It appears that as per the compromise decree the decree holders/plaintiffs were to give a total amount of Rs. 12 lakhs to defendants 5 to 23 and out of this Rs.12 lakhs, Rs.9 lakhs were to be

given at the time of compromise by cheque and Rs.3 lakhs were to be given at the time of execution of sale deed.

3. It appears that the cheque of Rs.9 lakhs has been issued by the plaintiffs. In the impugned order dated 9/7/2004 the learned Judge has observed that at page No.8 of the pursis defendants 5 to 23 have admitted that they have received the cheque of Rs.9 lakhs and agreed to receive remaining Rs.3 lakhs at the time of sale deed. In order dated 22/7/2005 the executing court has observed that the decree holder has paid the entire consideration to the judgment debtor. However, it is the case of the petitioners that they have not received their share out of the said Rs. 9 lakhs. Similarly it is the case of the petitioners that they have also not received their share in the remaining Rs. 3 lakhs. They, therefore, raised objection which was not entertained by the executing court and hence this petition.

4. I have heard Shri Bodake the learned counsel for the petitioners.

5. There does not appear to be any dispute about

the fact that the cheques issued by the plaintiffs have been honoured. The executing court has observed in its order dated 9/7/04 that Shivaji Laxman and Keshwant Rambhau have accepted the cheque on behalf of the judgment debtors 5 to 23.

6. Mr. Bodake, the learned counsel for the petitioners, however, states that his clients are not aware as to who has accepted the cheques. According to him his clients have not received their share. In my opinion, if the petitioners have any grievance against any of the judgment debtors who have accepted the cheques and money on their behalf they can take such steps as they deem fit against those persons who have accepted the cheques and money. Sofar as the decree holder is concerned, the moment he carries out his obligation of paying the amount as per the compromise decree, any grievance of the nature raised by the petitioners cannot be entertained by the executing court. Hence the petition cannot be entertained and will have to be rejected.

7. It is clarified that, if the petitioners have not received their share of the amount received on their behalf by any of the judgment debtors, they

will be at liberty to take such steps against them as they may be advised in law and all contentions of the petitioners in that behalf are kept open. This court has, however, not expressed any opinion in that behalf.

8. The petition is dismissed.

(SMT. RANJANA DESAI,J.)